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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,659	05/01/2006	Emmanouil Domazakis	CFAV-7	8474
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KRIEG DEVAULT LLP				
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EXAMINER				
STULIL, VERA				
ART UNIT		PAPER NUMBER		
1794				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/577,659

Applicant(s)

DOMAZAKIS, EMMANOUIL

Examiner

VERA STULII

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The Examiner for this Application has changed to Vera Stulii (AU 1794).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 is rendered indefinite for the recitation of the phrases "ending the tumbling" and "resuming the tumbling". It is not clear how the tumbling is ended, when it is being resumed after the addition of the olive oil. It appears that tumbling is stopped or paused for the addition of olive oil and then continued. Therefore, tumbling process is not "ended" at this point of the production cycle. Correction or clarification is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Domazakis (U.S. 2003/0049364) in view of Brandt (Marinades 'Meat' Challenges).

Regarding claim 3, Domazakis teaches a method of producing meat-based products, such as cooked pork meats, sausages, and salamis, with direct embodiment of olive oil, which includes the following stages:

- Contacting meat with an appropriate brine, comprising water, salt and seasonings at low temperature (0° C) during mixing in the mixing machine([0038], Claim 1);
- Continuing mixing in the mixing machine until the temperature reaches 2°C ([0038]);
- Insertion of olive oil ([0038]);
- Continuation of mixing with simultaneous application of vacuum "in order to avoid oxidation" the temperature reaches 2 ° C ([0038]);
- Encasing meat with simultaneous application of vacuum and pasteurization ([0038])
- Freezing of the product (Abstract; paragraph [0032]).

It is noted that Domazakis discloses mixing prior to the step of olive oil addition, and after the step of olive oil addition, and therefore meets the limitation of claim 3.

In regard to claim 3, Domazakis is silent as to the "entire muscular tissue" meat pieces. Since Domazakis discloses multiple nutritional benefits of olive oil and benefits of substitution of animal fat with olive oil ([0001]-[0012], [0015]), one of ordinary skill in the art would have been motivated to modify Domazakis and to employ the process of incorporation of olive oil in the "entire muscular tissue" meat pieces for the benefits as disclosed by Domazakis. One of ordinary skill in the art would have been motivated to do so, in order to substitute animal fat with olive oil, to reduce caloric value of the meat piece, and to impart high nutritional characteristic of olive oil to meat piece.

In regard to claim 3, Domazakis is silent as to the injecting marinade into the meat mixture. In case of the chopped meat, it is not necessary to employ injecting in order to contact meat with brine, the simple mixing is enough. Brandt discloses that the contact of marinade with meat in order to impart flavor could be performed via injecting (page 4). One of ordinary skill in the art would have been motivated to employ alternative method of contacting marinade/brine with meat such as injecting in order to achieve desired level of contact of meat with marinade. One of ordinary skill in the art would have been motivated to do so, since injection of brines/marinades into "entire muscular tissue" meat cuts was a well established practice in the art.

In regard to claim 3, Domazakis is silent as to the tumbling of meat. Brandt discloses that "[m]ixing, tumbling and massaging of meat at low temperatures facilitates tenderization through disintegration of the muscle fiber sheath and stretching of the myofibrils. The type of ingredients added also affects tenderization". Since Brandt discloses that tumbling is an alternative to mixing that at low temperatures facilitates

tenderization through disintegration of the muscle fiber sheath and stretching of the myofibrils, one of ordinary skill in the art would have been motivated to modify Domazakis in view Brandt and to employ tumbling instead of mixing as an alternative technique for tenderization through disintegration of the muscle fiber sheath and stretching of the myofibrils as disclosed by Brandt.

Response to Arguments

The rejection of claims 1 and 2 35 U.S.C. 112, second paragraph, and under 35 U.S.C. 102(b) or, in the alternative, under 35 U.S.C. 103(a) have been withdrawn due to the cancellation of claims.

Applicant's arguments with respect to claims 1-2 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VERA STULII whose telephone number is (571)272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vera Stulii/
Examiner, Art Unit 1794

/Keith D. Hendricks/
Supervisory Patent Examiner, Art Unit 1794